HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 644 of 2007

Between:

Velupula Anandam

… Appellant

And

The Chairman & Managing Director,
APSRTC, RTC X Roads, Hyderabad
and two others.

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Sri B.V.S.S.B.K. Ranjit

11th September, 2007

Per G.S. Singhvi, C.J.

Whether the provisions of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short, 'the 1959 Act') and the rules framed thereunder in the matter of sending requisition of vacancies by the State and other employers are mandatory and whether respondent Nos.1 and 2 acted illegally by not considering the appellant's candidature for appointment as Driver/Conductor in the services of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') are the questions which arises for determination in this appeal filed by him against order dated 20th June, 2006 passed by the learned Single Judge in Writ

Petition No.12152 of 2006.

A perusal of the record shows that in response to communication dated 1-3-2005 sent by Regional Manager, A.P.S.R.T.C., Karimnagar (respondent No.2), Employment Officer, District Employment Office, Karimnagar sponsored the names of certain candidates including the appellant for appointment to the post of Driver. However, respondent No.2 did not take further steps for recruitment of Drivers. Instead, Executive Director of Zones, A.P.S.R.T.C., issued two notifications dated 17-3-2006 inviting applications for engaging Drivers and Conductors on contract basis on a monthly consolidated remuneration of Rs.3020/-. The appellant did not apply pursuant to those notifications because he had crossed the upper age limit and filed writ petition under Article 226 of the Constitution of India for issue of a mandamus to the respondents to consider his candidature for appointment as Driver/Conductor on the basis of the list sent by respondent No.3.

The learned Single Judge dismissed the writ petition by observing that the petitioner is not eligible to be considered for appointment as Driver or Conductor and the mere fact that his name was earlier sponsored by the employment exchange cannot enure to his advantage.

Sri B.V.S.S.B.K. Ranjit emphasised that at the time of sponsoring of the names of eligible candidates by respondent No.3, the appellant was eligible for appointment as Driver and argued that non-consideration of his candidature by respondent Nos.1 and 2 is liable to be declared as violative of Articles 14 and 16 of the Constitution of India. Learned counsel relied on the provisions of Sections 3 and 4 of the 1959 Act and Rule 5 of the Employment Exchanges (Compulsory Notification of Vacancies) Rules, 1960 and argued that a candidate

like the appellant who fulfilled the conditions of forwarding the list of eligible candidates by respondent No.3 to respondent No.2, cannot be deprived of his legitimate right to be considered for appointment against the requisitioned posts.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed summarily. In the first place, it is apposite to mention that the appellant has not placed before the Court the requisition sent by respondent No.2 to respondent No.3 and the list of eligible candidates forwarded by the latter, and without going through these documents, it is not possible to render any decision on the issue relating to the eligibility of the appellant to be appointed as Driver. Secondly, it is to be noted that the provisions of the 1959 Act are applicable to regular vacancies in the establishment and not to the appointments made on contract basis. This is evinced from the plain language of Sections 3 and 4 of the 1959 Act, which are reproduced below:

"**3. Act not to apply in relation to certain vacancies._**

(1) This Act shall not apply in relation to vacancies, -

(a) in any employment in agriculture (including horticulture) in any establishment in private sector other than employment as agricultural or farm machinery operatives;

(b) in any employment in domestic service;

(c) in any employment the total duration of which is less than three months;

(d) in any employment to do unskilled office work;

(e) in any employment connected with the staff of Parliament.

(2) Unless the Central Government otherwise directs by notification in the Official Gazette in this behalf, this Act shall not also apply in relation to-

(a) vacancies which are proposed to be filled through promotion or by absorption of surplus staff of any branch or department of the same establishment or on the result of any examination conducted or interview held by, or on the recommendation of, any independent agency, such as the Union or a State Public Service Commission and the like;

(b) vacancies in any employment which carries a remuneration of less

than sixty rupees in a month.

4. Notification of vacancies to employment exchanges.-

(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

(3) The manner in which the vacancies referred to in sub-section (1) or sub-section (2) shall be notified to the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such may be prescribed.

(4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchanges to fill any vacancy merely because that vacancy has been notified under any of the sub-sections."

A reading of notifications dated 17-3-2006 makes it clear that the employment envisaged under those notifications was by way of engagement of Conductors and Drivers on contract basis on a monthly consolidated remuneration and not by way of regular appointment in the cadre. Therefore, only those candidates could be considered for engagement on contract basis who satisfied the eligibility conditions specified in the notifications. Admittedly, the appellant did not apply for engagement as Conductor or Driver on contract basis because he was not within the age limit. Therefore, he cannot be heard to make a complaint of violation of his fundamental right of equality in the matter of employment.

The appellant's plea that by virtue of sponsoring of his name pursuant to requisition dated 1-3-2005 sent by respondent No.2 to respondent No.3, he acquired a right to be considered for appointment

against the existing vacancies of Driver merits rejection because it is settled law that a public employer is not obliged to make appointment against the existing and even advertised vacancies. It is also settled law that a candidate who is selected by the competent recruiting agency does not acquire an indefeasible right to be appointed against the advertised post and the Court cannot issue a mandamus to the competent authority to appoint a selected candidate – **State of Haryana v. Subash Chander Marawah**[1] and **Shankarshan Dash v. Union of India**[2]**.**

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1293 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

11th September, 2007

C.V. NAGARJUNA REDDY, J

ARS

---

[1] AIR 1973 SC 2216

[2] AIR 1991 SC 1612